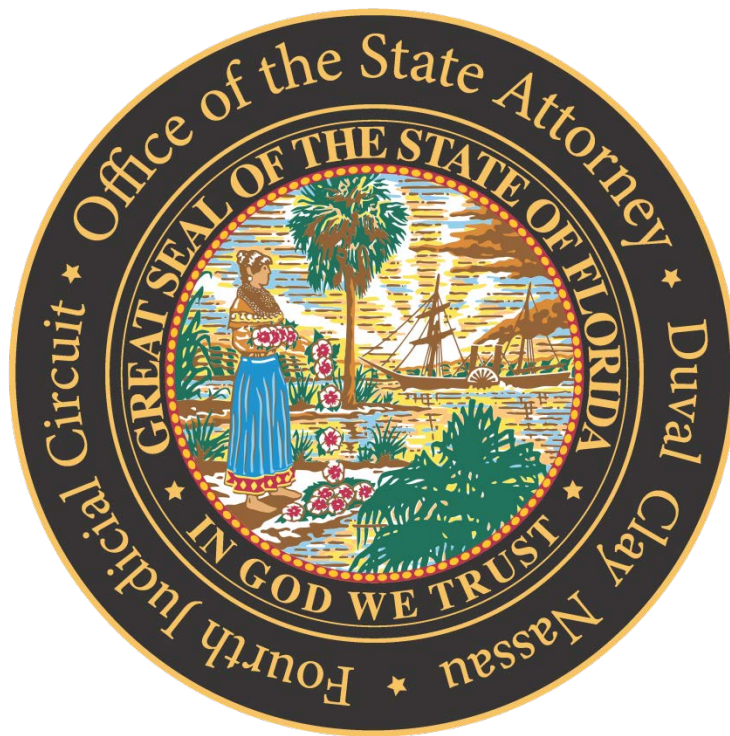


# State Attorney's Office

## Fourth Judicial Circuit



Unlicensed Carrying Concealed Firearm  
Diversion Program

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## I. Purpose

Defendants charged with unlicensed carrying a concealed firearm (“UCCF”) often fall into two distinct categories. The first group is comprised of dangerous, unpredictable individuals with an increased risk of harming others. The second group includes those who are irresponsible, negligent, and/or uninformed regarding firearm laws. Without robust law enforcement intelligence, it may be difficult to decipher which defendants fall into each category. For those identified as members of the latter category, a diversion program is an ideal alternative to incarceration to address the criminal conduct, reform and educate the defendant, and enhance public safety while also reducing system costs.

## II. Eligibility

The State Attorney has the exclusive authority to refer appropriate defendants to a diversion program that includes supervision and special conditions, *infra*. Felony Pretrial Intervention (“FPTI”) is the primary diversion program in the Fourth Judicial Circuit. It includes supervision by the Department of Corrections (“DOC”) and is governed by Section 948.08(2), Florida Statutes. This statute limits FPTI participation to defendants with no more than one misdemeanor conviction. A defendant ineligible for the FPTI program but otherwise appropriate for diversion may be placed into a comparable program when the interest of justice dictates.

When determining whether a defendant is appropriate for UCCF diversion, the Assistant State Attorney should consider, *inter alia*, the totality of the circumstances, any history of mental illness involving acts of violence, as well as any aggravating or mitigating factors. The following is a non-exhaustive list for each.

## III. Unlicensed Carrying Concealed Firearm Aggravating Factors

### Illegal Activity:

- Illegal controlled substance/s is found on defendant’s person (Not including lawfully possessed medical marijuana)
- Illegal controlled substance/s is found in vehicle that was subject of the stop (Not including lawfully possessed medical marijuana)
- Defendant is the driver or passenger in a stolen vehicle
- Defendant is arrested in tandem for another offense

### Firearms Characteristics:

- Firearm is listed as stolen
- Firearm has NIBIN associations

### Defendant and/or Case Characteristics

- Aggravating circumstances exist regarding defendant’s conduct with law enforcement
- Aggravating circumstances exist regarding defendant’s conduct with firearm before police response

- Defendant is a known gang member or associate as defined by § 874.03, F.S.
- Defendant has on his/her person or in his/her possession indicia of criminal involvement, including, but not limited to, ski mask, stolen property, gang identifiers/clothing;
- Firearm was concealed on defendant's person
- Defendant is the subject of a Risk Protection Order proceeding. § 790.401, F.S. (2019)

**Defendant's Criminal History:**

- Defendant has a prior violent or firearm felony arrest<sup>1</sup>
- Defendant, 24 years of age or older, has a prior violent or firearm felony juvenile delinquency adjudication
- Defendant has a prior withhold of adjudication on a felony (Not including bad checks or DWSLR)
- Defendant has a prior domestic violence conviction
- Domestic violence injunction. (In order to find this aggravator, at least one of the following circumstances should apply: 1) Defendant is the subject of an active domestic violence injunction; 2) Defendant was arrested and convicted contemporaneous with the prior domestic violence injunction; or 3) More than one final injunction has been entered against the defendant involving separate victims.)

## **IV. Unlicensed Carrying Concealed Firearm Mitigating Factors**

**Firearm Characteristics**

- Firearm was acquired legally

**Case Characteristics**

- Defendant readily advised law enforcement of the presence of the firearm, and responded appropriately to the officer's questions concerning the firearm and the recovery of the firearm
- Defendant called 911 after display or use of the firearm
- If the firearm was brandished, the defendant did so in response to a plausible threat
- If the firearm was not securely encased as defined by statute, it was possessed in a manner that was not readily accessible by the defendant

**Defendant Characteristics**

- Defendant has military or other formal training in firearms

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<sup>1</sup> Such qualifying prior felony arrests include those for Murder, Manslaughter, Sexual battery, Carjacking, Home-invasion robbery, Robbery, Arson, Kidnapping, Aggravated Assault with a Firearm, Aggravated Battery, Aggravated Stalking, Shooting or Throwing Deadly Missiles, Armed Burglary, Battery on a Law Enforcement Officer, Resisting with Violence, Burglary to a Dwelling.

- Defendant has a valid reason for carrying a firearm, such as one related to business or occupation
- Defendant took steps to obtain a concealed weapons permit such as registering for or completing an approved firearm safety class prior to arrest.
- Defendant previously held a CWFL that was not renewed
- Defendant is eligible for a CWFL-especially if indigent

## **V. Standard Felony Diversion Conditions**

1. \$150 SAO program fee
2. \$50 Crimes Compensation Trust Fund
3. \$20 Crime Stoppers Trust Fund
4. \$40/month Cost of Supervision to Department of Corrections (OR SAO)
5. 50 hours community service
6. Full time employment/school
7. If unemployed, complete Operation New Hope Ready4Work.
  - a. If unable to complete Operation New Hope Ready4Work program, complete 10 job applications per week until employment is secured.
8. Not use intoxicants to excess
9. Random Urinalysis
10. Report monthly
11. No firearm possession. See § 948.03(m) F.S. (2019). (Defendant may possess a firearm while participating in an approved Firearms Safety Course.)
12. May not change residence without notifying probation officer.
13. May not travel outside the county of residence without approval from the SAO or DOC.

## **VI. UCCF Diversion Special Conditions**

1. No early termination until NIBIN results are confirmed.
2. The firearm in defendant's possession may be subject to forfeiture at the sole discretion of the State Attorney's Office without regard to ownership. The firearm in defendant's possession shall be forfeited upon a positive NIBIN result.
3. Firearms Safety Course pursuant to Sec. 790.06, Fla. Stat., or approved by the Florida Department of Agriculture
4. SAO4 Firearm Safety Summary and Quiz

## VII. Optional Special Conditions

1. Early termination upon completion of all conditions.
2. Early termination upon completion of all conditions after 6 months.
3. No early termination.
4. If unemployed, complete Operation New Hope Ready4Work.
5. If unemployed, seek gainful employment and provide proof of completing 10 job applications per week. Note: This provision is not applicable if you are on disability.
6. Attend AA Meetings once a week for the duration of the diversion program
7. Attend Family Preservation classes.
8. Attend a MADD Victim Impact Panel (VIP)
9. Complete a substance abuse evaluation and any recommended follow-up treatment
10. Complete a mental health evaluation and any follow-up treatment
11. Attend Anger Management
12. Forfeit weapon and/or ammunition
13. Write a letter of apology to victim(s)
14. No contact with co-defendant(s)
15. No contact with victim(s)
16. No violent contact with the victim(s)
17. Obtain a valid Florida Driver's License
18. Earn your GED
19. Comply with the DCF case plan
20. Pay \$100.00 cost of prosecution fee
21. Appear in court and testify truthfully in all future criminal proceedings while under supervision
22. Adhere to a curfew from 10:00 p.m. to 6:00 a.m. The probation officer may modify the curfew, as needed, for employment purposes.